IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.314 OF 2002

Vidyanagar Co-op. Hsg. Soc
& Ors. .. Appellants

vs.

Ramchandra D.Shelar
& Ors. .. Respondents.

a/w

A.O.NO.315 OF 2002

Vidyanagar Co-op. Hsg. Soc
& Ors. .. Appellants

vs.

Ramchandra D.Shelar
& Ors. .. Respondents.

a/w

A.O.NO.316 OF 2002

Vidyanagar Co-op. Hsg. Soc
& Ors. .. Appellants

vs.

Ramchandra D.Shelar
& Ors. .. Respondents.

a/w

A.O.NO.336 OF 2002

Vidyanagar Co-op. Hsg. Soc
& Ors. .. Appellants

vs.

Ramchandra D.Shelar

& Ors. .. Respondents.

Mr.C.G.Gavnekar, Advocate for the Respondent Nos.1 to 6
Ms.Geeta Mulekar for Respondent No.8

CORAM : A.S.OKA, J.

DATED : 22nd March, 2005.

P.C. :

1. Heard learned Counsel appearing for the parties. The appeal is preferred by the Original Defendants challenging the order of remand. The suit filed by the Respondent Nos.1 to 6 was dismissed by the trial Court and in appeal preferred by the Respondent Nos.1 to 6 in the District Court, order of remand has been passed.

2. Shri Suryavanshi appearing for the Appellants stated that the remand is unwarranted. He submitted that in the trial Court the original Plaintiffs failed to establish that the Original Defendant Nos.2 and 3 sold the plot to the Original Defendant No.4 with a view to deprive the original Plaintiffs from getting the plot in the proposed housing society. He submitted that after the original plaintiffs failed on merits in the trial Court, the order of remand is uncalled for.

The learned Counsel appearing for the Respondent Nos.1 to 6 has supported the impugned judgment and order.

3. The Appellants herein were Respondents before the District Court. In paragraph No.12 of the judgment the District Court has held thus:

> "Shri D.B.Bhosale, Adv. for the respondent rightly pointed out that execution decree for partition and separate possession of share of plaintiffs in the suit land cannot be passed as other members of proposed society are not joined as parties to the suit. By filing written reply notes of argument (Exh.30), Shri S.D.Kulkarni, Advocate for the Appellants also conceded that for proper adjudication of dispute the remaining members of proposed society are to be joined as parties to the suit and civil suit is to be remanded for retrial after joining all necessary parties. Learned Advocates for both the parties also fairly conceded that Court is fully empowered to join necessary parties for passing effective decree. I hold that the decree passed by Trial Court, without considering above discussed legal aspect is bad in law and whole matter is to be reconsidered by trial court after joining all members of society and any other persons to whom plots are sold; as parties to the suit. My conclusion is that suit is to be remanded for retrial subject to following directions."

It is thus apparent that the order passed by the Appellate Court is for the purpose of enabling the

original Plaintiffs to implead all necessary parties to the suit. Moreover, the order or remand appears to be based on concession of the Counsel appearing for parties before the Appellate Court.

4. Even if all members of the proposed society are impleaded, it is obvious that the said added Defendants can always raise all possible contentions on merits including bar of limitation.

5. No case for interference is made out. Subject to the observations made above, Appeal is dismissed with no order as to costs.

6. The learned trial Judge will decide the suit as early as possible and in any event on or before 30th April, 2006.

(A.S.Oka, J.)